H. R. 2124

To amend the Immigration and Nationality Act to improve worksite enforcement, prevent crime, and gain operational control of the borders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2013

Mr. BOWEN of Georgia introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Ways and Means, Armed Services, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To amend the Immigration and Nationality Act to improve worksite enforcement, prevent crime, and gain operational control of the borders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) Short Title.—This Act may be cited as the “Keeping the Promise of IRCA Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2. SECTION 1. SHORT TITLE.

3. (a) Short Title.—This Act may be cited as the “Keeping the Promise of IRCA Act”.

4. (b) Table of Contents.—The table of contents for this Act is as follows:
Sec. 1. Short title.

TITLE I—WORKSITE ENFORCEMENT THAT WORKS

Sec. 101. Employment eligibility verification process.
Sec. 102. Employment eligibility verification system.
Sec. 103. Recruitment, referral, and continuation of employment.
Sec. 104. Good faith defense.
Sec. 105. Repeal.
Sec. 106. Penalties.

TITLE II—CRIME PREVENTION AND PENALTIES

Sec. 201. Establishment of electronic birth and death registration systems.
Sec. 203. Alien smuggling and terrorism prevention.
Sec. 204. Eligibility for State criminal alien assistance program funding.
Sec. 205. ICE immigration enforcement agents.
Sec. 206. ICE detention enforcement officers.
Sec. 207. Additional ICE deportation officers and support staff.
Sec. 208. Assisting gang and drug task forces.
Sec. 209. Protecting communities.
Sec. 211. Pilot program for electronic field processing.
Sec. 212. Restricting visas for countries that refuse to repatriate their nationals.
Sec. 213. Additional ICE detention space.
Sec. 214. Additional immigration judgeships and law clerks.
Sec. 215. Additional ICE prosecutors.
Sec. 216. Ensuring the safety of ICE officers and agents.
Sec. 217. ICE Advisory Council.

TITLE III—GAINING OPERATIONAL CONTROL OF AMERICA’S BORDERS

Sec. 301. Automated entry-exit control system.
Sec. 302. Measuring border security.
Sec. 303. National strategy to achieve operational control of America’s borders.
Sec. 304. Improving border technology.
Sec. 305. Ensuring the safety of border patrol agents.

1 TITLE I—WORKSITE
2 ENFORCEMENT THAT WORKS
3 SEC. 101. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.
4 (a) IN GENERAL.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended to read as follows:
“(b) Employment Eligibility Verification

Process.—

“(1) New hires, recruitment, and referral.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the following:

“(A) Attestation after examination of documentation.—

“(i) Attestation.—On the date of hire (as defined in subsection (h)(4)), the person or entity shall attest, under penalty of perjury and on a form, including electronic and telephonic formats, designated or established by the Secretary by regulation not later than 6 months after the date of the enactment of the Keeping the Promise of IRCA Act, that it has verified that the individual is not an unauthorized alien by—

“(I) obtaining from the individual the individual’s social security account number and recording the number on the form (if the individual
claims to have been issued such a number), and, if the individual does not attest to United States nationality under subparagraph (B), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

“(II) examining—

“(aa) a document relating to the individual presenting it described in clause (ii); or

“(bb) a document relating to the individual presenting it described in clause (iii) and a document relating to the individual presenting it described in clause (iv).

“(ii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION AND ESTABLISHING IDENTITY.—A document described in this subparagraph is an individual’s—
“(I) unexpired United States passport or passport card;

“(II) unexpired permanent resident card that contains a photograph;

“(III) unexpired employment authorization card that contains a photograph;

“(IV) in the case of a non-immigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I–94 or Form I–94A, or other documentation as designated by the Secretary specifying the alien’s non-immigrant status as long as the period of status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;

“(V) passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I–94 or Form I–94A, or other documentation as designated by the Secretary, indicating
nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI; or

“(VI) other document designated by the Secretary of Homeland Security, if the document—

“(aa) contains a photograph of the individual and biometric identification data from the individual and such other personal identifying information relating to the individual as the Secretary of Homeland Security finds, by regulation, sufficient for purposes of this clause;

“(bb) is evidence of authorization of employment in the United States; and

“(cc) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

“(iii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document
described in this subparagraph is an individual’s social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States).

“(iv) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is—

“(I) an individual’s unexpired State issued driver’s license or identification card if it contains a photograph and information such as name, date of birth, gender, height, eye color, and address;

“(II) an individual’s unexpired U.S. military identification card;

“(III) an individual’s unexpired Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs; or

“(IV) in the case of an individual under 18 years of age, a parent or legal guardian’s attestation under
penalty of law as to the identity and age of the individual.

“(v) Authority to prohibit use of certain documents.—If the Secretary of Homeland Security finds, by regulation, that any document described in clause (i), (ii), or (iii) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit or place conditions on its use for purposes of this paragraph.

“(vi) Signature.—Such attestation may be manifested by either a hand-written or electronic signature.

“(B) Individual attestation of employment authorization.—

“(i) In general.—During the verification period (as defined in subparagraph (F)), the individual shall attest, under penalty of perjury on the form designated or established for purposes of subparagraph (A), that the individual is a citizen or national of the United States, an
alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary of Homeland Security to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or electronic signature. The individual shall also provide that individual’s social security account number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States nationality under this subparagraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.

“(ii) CRIMINAL PENALTY.—

“(I) OFFENSES.—Any individual who, pursuant to clause (i), provides a social security account number or an identification or authorization number established by the Secretary of Homeland Security that belongs to another person, knowing that the number does not belong to the individual providing
the number, shall be fined under title
18, United States Code, imprisoned
not less than 1 year and not more
than 15 years, or both. Any individual
who, pursuant to clause (i), provides,
during and in relation to any felony
violation enumerated in section
1028A(c) of title 18, United States
Code, a social security account num-
ber or an identification or authoriza-
tion number established by the Sec-
retary of Homeland Security that be-
ongs to another person, knowing that
the number does not belong to the in-
dividual providing the number, in ad-
dition to the punishment provided for
such felony, shall be fined under title
18, United States Code, imprisoned
for a term of 2 years, or both.

“(II) CONSECUTIVE SENTENCE.—Notwithstanding any other
provision of law—

“(aa) a court shall not place
on probation any individual con-
victeed of a violation of this clause;

“(bb) except as provided in item (dd), no term of imprisonment imposed on an individual under this section shall run concurrently with any other term of imprisonment imposed on the individual under any other provision of law, including any term of imprisonment imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this section occurred;

“(cc) in determining any term of imprisonment to be imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this clause occurred, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take
into account, any separate term of imprisonment imposed or to be imposed for a violation of this clause; and

“(dd) a term of imprisonment imposed on an individual for a violation of this clause may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that individual for an additional violation of this clause, except that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the United States Sentencing Commission pursuant to section 994 of title 28, United States Code.

“(C) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

“(i) IN GENERAL.—After completion of such form in accordance with subpara-
graphs (A) and (B), the person or entity shall—

“(I) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the recruiting or referral of the individual, or, in the case of the hiring of an individual, the date on which the verification is completed, and ending—

“(aa) in the case of the recruiting or referral of an individual, 3 years after the date of the recruiting or referral; and

“(bb) in the case of the hiring of an individual, the later of 3 years after the date the verification is completed or one year after the date the individ-
ual’s employment is terminated;

and

“(II) during the verification pe-
period (as defined in subparagraph (F)),
make an inquiry, as provided in sub-
section (d), using the verification sys-
tem to seek verification of the identity
and employment eligibility of an indi-

“(ii) CONFIRMATION.—

“(I) CONFIRMATION RECEIVED.—If the person or other entity
receives an appropriate confirmation
of an individual’s identity and work
eligibility under the verification sys-
tem within the time period specified,
the person or entity shall record on
the form an appropriate code that is
provided under the system and that
indicates a final confirmation of such
identity and work eligibility of the in-
dividual.

“(II) TENTATIVE NONCONFIRMA-
TION RECEIVED.—If the person or
other entity receives a tentative non-
confirmation of an individual’s identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does not contest the nonconfirmation within the time period specified, the nonconfirmation shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a final nonconfirmation. If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under subsection (d). The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the in-
dividual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final.

Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure. In no case shall an employer rescind the offer of employment to an individual because of a failure of the individual to have identity and work eligibility confirmed under this subsection until a nonconfirmation becomes final. Nothing in this subclause shall apply to a recission of the offer of employment for any reason other than because of such a failure.

“(III) Final Confirmation or Nonconfirmation Received.—If a final confirmation or nonconfirmation is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of iden-
tity and work eligibility of the individual.

“(IV) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

“(V) CONSEQUENCES OF NON-CONFIRMATION.—

“(aa) TERMINATION OR NOTIFICATION OF CONTINUED EM-
ployement.—If the person or other entity has received a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

“(bb) Failure to Notify.—If the person or entity fails to provide notice with respect to an individual as required under item (aa), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.
“(VI) Continued employment after final nonconfirmation.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).

“(D) Effective dates of new procedures.—

“(i) Hiring.—The provisions of this paragraph shall apply to a person or other entity hiring an individual for employment in the United States as follows:

“(I) With respect to employers having 10,000 or more employees in the United States on the date of the enactment of the Keeping the Promise of IRCA Act, on the date that is 6 months after the date of the enactment of such Act.

“(II) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on
the date of the enactment of the Keeping the Promise of IRCA Act, on the date that is 12 months after the date of the enactment of such Act.

“(III) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Keeping the Promise of IRCA Act, on the date that is 18 months after the date of the enactment of such Act.

“(IV) With respect to employers having one or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Keeping the Promise of IRCA Act, on the date that is 24 months after the date of the enactment of such Act.

“(ii) Recruiting and Referring.— The provisions of this paragraph shall apply to a person or other entity recruiting or referring an individual for employment in the United States on the date that is 12
months after the date of the enactment of
the Keeping the Promise of IRCA Act.

“(iii) TRANSITION RULE.—Subject to
paragraph (4), the following shall apply to
a person or other entity hiring, recruiting,
or referring an individual for employment
in the United States until the effective
date or dates applicable under clauses (i)
and (ii):

“(I) This subsection, as in effect
before the enactment of the Keeping
the Promise of IRCA Act.

“(II) Subtitle A of title IV of the
Illegal Immigration Reform and Im-
migrant Responsibility Act of 1996 (8
U.S.C. 1324a note), as in effect be-
fore the effective date in section 7(c)
of the Keeping the Promise of IRCA
Act.

“(III) Any other provision of
Federal law requiring the person or
entity to participate in the E-Verify
Program described in section 403(a)
of the Illegal Immigration Reform and
Immigrant Responsibility Act of 1996
(8 U.S.C. 1324a note), as in effect before the effective date in section 7(e) of the Keeping the Promise of IRCA Act, including Executive Order 13465 (8 U.S.C. 1324a note; relating to Government procurement).

"(E) VERIFICATION PERIOD DEFINED.—

"(i) IN GENERAL.—For purposes of this paragraph:

""(I) In the case of recruitment or referral, the term ‘verification period’ means the period ending on the date recruiting or referring commences.

""(II) In the case of hiring, the term ‘verification period’ means the period beginning on the date on which an offer of employment is extended and ending on the date that is 3 business days after the date of hire, except as provided in clause (ii).

""(ii) SPECIAL RULE.—Notwithstanding clause (i)(II), in the case of an alien who is authorized for employment and who provides evidence from the Social Security Administration that the alien has
applied for a social security account number, the verification period ends 3 business days after the alien receives the social security account number.

“(2) Reverification for individuals with limited work authorization.—

“(A) In general.—A person or entity shall make an inquiry, as provided in subsection (d), using the verification system to seek reverification of the identity and employment eligibility of all individuals with a limited period of work authorization employed by the person or entity during the 3 business days before the date on which the employee’s work authorization expires as follows:

“(i) With respect to employers having 10,000 or more employees in the United States on the date of the enactment of the Keeping the Promise of IRCA Act, beginning on the date that is 6 months after the date of the enactment of such Act.

“(ii) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on the date of the en-
actment of the Keeping the Promise of IRCA Act, beginning on the date that is 12 months after the date of the enactment of such Act.

“(iii) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Keeping the Promise of IRCA Act, beginning on the date that is 18 months after the date of the enactment of such Act.

“(iv) With respect to employers having 1 or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Keeping the Promise of IRCA Act, beginning on the date that is 24 months after the date of the enactment of such Act.

“(B) Reverification.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—
“(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

“(ii) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during the period beginning on the date the reverification commences and ending on the date that is the later of 3 years after the date of such reverification or 1 year after the date the individual’s employment is terminated.

“(3) EARLY COMPLIANCE.—

“(A) FORMER E-VERIFY REQUIRED USERS, INCLUDING FEDERAL CONTRACTORS.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Keeping the Promise of IRCA Act, the Secretary is authorized to commence requiring employers required to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Re-
sponsibility Act of 1996 (8 U.S.C. 1324a note),
including employers required to participate in
such program by reason of Federal acquisition
laws (and regulations promulgated under those
laws, including the Federal Acquisition Regula-
tion), to commence compliance with the require-
ments of this subsection (and any additional re-
quirements of such Federal acquisition laws and
regulation) in lieu of any requirement to par-

ticipate in the E-Verify Program.

“(B) F ORMER E-VERIFY VOLUNTARY
USERS AND OTHERS DESIRING EARLY COMPLI-
ANCE.—Notwithstanding the deadlines in para-
graphs (1) and (2), beginning on the date of
the enactment of the Keeping the Promise of
IRCA Act, the Secretary shall provide for the
voluntary compliance with the requirements of
this subsection by employers voluntarily electing
to participate in the E-Verify Program de-
scribed in section 403(a) of the Illegal Immigra-
tion Reform and Immigrant Responsibility Act
of 1996 (8 U.S.C. 1324a note) before such
date, as well as by other employers seeking vol-
untary early compliance.
“(4) Copying of documentation permitted.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

“(5) Limitation on use of forms.—A form designated or established by the Secretary of Homeland Security under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and any other provision of Federal criminal law.

“(6) Good faith compliance.—

“(A) In general.—Except as otherwise provided in this subsection, a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

“(B) Exception if failure to correct after notice.—Subparagraph (A) shall not apply if—
“(i) the failure is not de minimus;

“(ii) the Secretary of Homeland Security has explained to the person or entity the basis for the failure and why it is not de minimus;

“(iii) the person or entity has been provided a period of not less than 30 calendar days (beginning after the date of the explanation) within which to correct the failure; and

“(iv) the person or entity has not corrected the failure voluntarily within such period.

“(C) Exception for pattern or practice violators.—Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

“(7) Single extension of deadlines upon certification.—In a case in which the Secretary of Homeland Security has certified to the Congress that the employment eligibility verification system required under subsection (d) will not be fully operational by the date that is 6 months after the date of the enactment of the Keeping the Promise of
IRCA Act, each deadline established under this section for an employer to make an inquiry using such system shall be extended by 6 months. No other extension of such a deadline shall be made.”.

(b) DATE OF HIRE.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following:

“(4) DEFINITION OF DATE OF HIRE.—As used in this section, the term ‘date of hire’ means the date of actual commencement of employment for wages or other remuneration, unless otherwise specified.”.

SEC. 102. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

Section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)) is amended to read as follows:

“(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

“(1) IN GENERAL.—Patterned on the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), the Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the
Secretary, which may be a nongovernmental entity)—

“(A) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual’s identity and whether the individual is authorized to be employed; and

“(B) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

“(2) Initial Response.—The verification system shall provide confirmation or a tentative non-confirmation of an individual’s identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative non-confirmation, the verification system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

“(3) Secondary Confirmation Process in Case of Tentative Nonconfirmation.—In cases of tentative noneconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification
process to confirm the validity of information pro-
vided and to provide a final confirmation or noncon-
firmation not later than 10 working days after the
date on which the notice of the tentative noncon-
firmation is received by the employee. The Secretary,
in consultation with the Commissioner, may extend
this deadline on a case-by-case basis, and if the time
is extended, shall document such extension within
the verification system. When final confirmation or
nonconfirmation is provided, the verification system
shall provide an appropriate code indicating such
confirmation or nonconfirmation.

“(4) Design and Operation of System.—
The verification system shall be designed and oper-
ated—

“(A) to maximize its reliability and ease of
use by persons and other entities consistent
with insulating and protecting the privacy and
security of the underlying information;

“(B) to respond to all inquiries made by
such persons and entities on whether individ-
uals are authorized to be employed and to reg-
ister all times when such inquiries are not re-
ceived;
“(C) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

“(D) to have reasonable safeguards against the system’s resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

“(i) the selective or unauthorized use of the system to verify eligibility; or

“(ii) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants; and

“(E) to limit the subjects of verification to the following individuals:

“(i) Individuals hired, referred, or recruited, in accordance with paragraph (1) or (4) of subsection (b).

“(ii) Employees and prospective employees, in accordance with paragraph (1), (2), (3), or (4) of subsection (b).
“(iii) Individuals seeking to confirm their own employment eligibility on a voluntary basis.

“(5) Responsibilities of Commissioner of Social Security.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation) under the verification system except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.
“(6) Responsibilities of Secretary of Homeland Security.—As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and alien identification or authorization number (or any other information as determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States, or to the extent that the Secretary determines to be feasible and appropriate, whether the records available to the Secretary verify the identity or status of a national of the United States.

“(7) Offenses.—

“(A) In general.—Any person or entity that, in making an inquiry under subsection (b)(1)(C)(i)(II), provides to the verification system a social security account number or an identification or authorization number estab-
lished by the Secretary of Homeland Security that belongs to a person other than the individual whose identity and employment authorization are being verified, knowing that the number does not belong to the individual whose identity and employment authorization are being verified, shall be fined under title 18, United States Code, imprisoned not less than 1 year and not more than 15 years, or both. If the person or entity, in making an inquiry under subsection (b)(1)(C)(i)(II), during and in relation to any felony violation enumerated in section 1028A(c) of title 18, United States Code, provides to the verification system a social security account number or an identification or authorization number established by the Secretary of Homeland Security that belongs to a person other than the individual whose identity and employment authorization are being verified, knowing that the number does not belong to the individual whose identity and work authorization are being verified, in addition to the punishment provided for such felony, shall be fined under title 18, United States Code, imprisoned for a term of 2 years, or both.
“(B) Consecutive sentence.—Notwithstanding any other provision of law—

“(i) a court shall not place on probation any person or entity convicted of a violation of this paragraph;

“(ii) except as provided in clause (iv), no term of imprisonment imposed on a person or entity under this section shall run concurrently with any other term of imprisonment imposed on the person or entity under any other provision of law, including any term of imprisonment imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this paragraph occurred;

“(iii) in determining any term of imprisonment to be imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this section occurred, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment im-
posed or to be imposed for a violation of this paragraph; and

“(iv) a term of imprisonment imposed on a person or entity for a violation of this paragraph may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person or entity for an additional violation of this paragraph, except that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the United States Sentencing Commission pursuant to section 994 of title 28, United States Code.

“(8) Updating Information.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in paragraph (3).
“(9) Limitation on use of the verification system and any related systems.—

“(A) No national identification card.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

“(B) Critical infrastructure.—The Secretary may authorize or direct any person or entity responsible for granting access to, protecting, securing, operating, administering, or regulating part of the critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))) to use the verification system to the extent the Secretary determines that such use will assist in the protection of the critical infrastructure.”.

SEC. 103. RECRUITMENT, REFERRAL, AND CONTINUATION OF EMPLOYMENT.

(a) Additional Changes to Rules for Recruitment, Referral, and Continuation of Employment.
MENT.—Section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)) is amended—

(1) in paragraph (1)(A), by striking “for a fee”;

(2) in paragraph (1), by amending subparagraph (B) to read as follows:

“(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).”;

(3) in paragraph (2), by striking “after hiring an alien for employment in accordance with paragraph (1),” and inserting “after complying with paragraph (1),”;

and

(4) in paragraph (3), by striking “hiring,” and inserting “hiring, employing,” each place it appears.

(b) DEFINITION.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)), as amended by section 101(b) of this Act, is further amended by adding at the end the following:

“(5) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term ‘refer’ means the act of sending or directing a person who is in the United States or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such
person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or non-union individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section, the term ‘recruit’ means the act of soliciting a person who is in the United States, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.”.
(c) Effective Date.—The amendments made by this section shall take effect on the date that is 1 year after the date of the enactment of this Act, except that the amendments made by subsection (a) shall take effect 6 months after the date of the enactment of this Act insofar as such amendments relate to continuation of employment.

SEC. 104. GOOD FAITH DEFENSE.

Section 274A(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(3)) is amended to read as follows:

“(3) Good faith defense.—

“(A) Defense.—An employer (or person or entity that hires, employs, recruits, or refers (as defined in subsection (h)(5)), or is otherwise obligated to comply with this section) who establishes that it has complied in good faith with the requirements of subsection (b)—

“(i) shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law for any employment-related action taken with respect to a job applicant or employee in good-faith reliance on informa-
tion provided through the system established under subsection (d); and

“(ii) has established compliance with its obligations under subparagraphs (A) and (B) of paragraph (1) and subsection (b) absent a showing by the Secretary of Homeland Security, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.

“(B) Failure to seek and obtain verification.—Subject to the effective dates and other deadlines applicable under subsection (b), in the case of a person or entity in the United States that hires, or continues to employ, an individual, or recruits or refers an individual for employment, the following requirements apply:

“(i) Failure to seek verification.—

“(I) In general.—If the person or entity has not made an inquiry, under the mechanism established under subsection (d) and in accordance with the timeframes established
under subsection (b), seeking verification of the identity and work eligibility of the individual, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

“(II) Special rule for failure of verification mechanism.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

“(ii) Failure to obtain verification.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate
verification of such identity and work eligibility under such mechanism within the time period specified under subsection (d)(2) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.”.

SEC. 105. REPEAL.

(a) IN GENERAL.—Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1234a note) is repealed.

(b) REFERENCES.—Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of, or pertaining to, the Department of Homeland Security, Department of Justice, or the Social Security Administration, to the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is deemed to refer to the employment eligibility confirmation system established under section 274A(d) of the Immigration and Nationality Act, as amended by section 102 of this Act.
(c) EFFECTIVE DATE.—This section shall take effect on the date that is 36 months after the date of the enactment of this Act.

SEC. 106. PENALTIES.

Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (e)(1)—

(A) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; and

(B) by striking “Service” and inserting “Department of Homeland Security”; 

(2) in subsection (e)(4)—

(A) in subparagraph (A), in the matter before clause (i), by inserting “, subject to paragraph (10),” after “in an amount”;

(B) in subparagraph (A)(i), by striking “not less than $250 and not more than $2,000” and inserting “not less than $2,500 and not more than $5,000”; 

(C) in subparagraph (A)(ii), by striking “not less than $2,000 and not more than $5,000” and inserting “not less than $5,000 and not more than $10,000”;
(D) in subparagraph (A)(iii), by striking “not less than $3,000 and not more than $10,000” and inserting “not less than $10,000 and not more than $25,000”; and

(E) by amending subparagraph (B) to read as follows:

“(B) may require the person or entity to take such other remedial action as is appropriate.”;

(3) in subsection (e)(5)—

(A) in the paragraph heading, strike “PAPERWORK”;

(B) by inserting “, subject to paragraphs (10) through (12),” after “in an amount”;

(C) by striking “$100” and inserting “$1,000”;

(D) by striking “$1,000” and inserting “$25,000”;

(E) by adding at the end the following:

“Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).”;}
(4) by adding at the end of subsection (e) the following:

“(10) Exemption from penalty for good faith violation.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the violator establishes that the violator acted in good faith.

“(11) Authority to debar employers for certain violations.—

“(A) In general.—If a person or entity is determined by the Secretary of Homeland Security to be a repeat violator of paragraph (1)(A) or (2) of subsection (a), or is convicted of a crime under this section, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debar-
ment procedures set forth in the Federal Acquisition Regulation.

“(B) Does not have contract, grant, agreement.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such an person or entity does not hold a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(C) Has contract, grant, agreement.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Govern-
ment’s interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to any appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(D) Review.—Any decision to debar a person or entity in accordance with this paragraph shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.

“(12) Office for State and Local Government Complaints.—The Secretary of Homeland Security shall establish an office—

“(A) to which State and local government agencies may submit information indicating potential violations of subsection (a), (b), or (g)(1) that were generated in the normal course of law enforcement or the normal course of other official activities in the State or locality;

“(B) that is required to indicate to the complaining State or local agency within 5 business days of the filing of such a complaint by
identifying whether the Secretary will further investigate the information provided;

“(C) that is required to investigate those complaints filed by State or local government agencies that, on their face, have a substantial probability of validity;

“(D) that is required to notify the complaining State or local agency of the results of any such investigation conducted; and

“(E) that is required to report to the Congress annually the number of complaints received under this paragraph, the States and localities that filed such complaints, and the resolution of the complaints investigated by the Secretary.”; and

(5) by amending paragraph (1) of subsection (f) to read as follows:

“(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a) (1) or (2) shall be fined not more than $15,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year and not more than 10 years, or both, notwithstanding the provisions of any other Federal law relating to fine levels.”.
TITLE II—CRIME PREVENTION
AND PENALTIES

SEC. 201. ESTABLISHMENT OF ELECTRONIC BIRTH AND DEATH REGISTRATION SYSTEMS.

In consultation with the Secretary of Health and Human Services and the Commissioner of Social Security, the Secretary of Homeland Security shall take the following actions:

(1) Work with the States to establish a common data set and common data exchange protocol for electronic birth registration systems and death registration systems.

(2) Coordinate requirements for such systems to align with a national model.

(3) Ensure that fraud prevention is built into the design of electronic vital registration systems in the collection of vital event data, the issuance of birth certificates, and the exchange of data among government agencies.

(4) Ensure that electronic systems for issuing birth certificates, in the form of printed abstracts of birth records or digitized images, employ a common format of the certified copy, so that those requiring such documents can quickly confirm their validity.
(5) Establish uniform field requirements for State birth registries.

(6) Not later than 1 year after the date of the enactment of this Act, establish a process with the Department of Defense that will result in the sharing of data, with the States and the Social Security Administration, regarding deaths of United States military personnel and the birth and death of their dependents.

(7) Not later than 1 year after the date of the enactment of this Act, establish a process with the Department of State to improve registration, notification, and the sharing of data with the States and the Social Security Administration, regarding births and deaths of United States citizens abroad.

(8) Not later than 3 years after the date of establishment of databases provided for under this section, require States to record and retain electronic records of pertinent identification information collected from requestors who are not the registrants.

(9) Not later than 6 months after the date of the enactment of this Act, submit to Congress a report on whether there is a need for Federal laws to address penalties for fraud and misuse of vital
records and whether violations are sufficiently en-
forced.

SEC. 202. ENHANCED PENALTIES FOR DOCUMENT FRAUD.

Section 1028(b)(3) of title 18, United States Code,
is amended—

(1) in subparagraph (B), by striking “or” at
the end;

(2) by redesignating subparagraph (C) as sub-
paragraph (D); and

(3) by inserting after subparagraph (B) the fol-
lowing:

“(C) to facilitate illegal immigration or
human smuggling; or”.

SEC. 203. ALIEN SMUGGLING AND TERRORISM PREVEN-
TION.

(a) CHECKS AGAINST TERRORIST WATCHLIST.—The
Secretary of Homeland Security shall, to the extent prac-
ticable, check against all available terrorist watchlists
those persons suspected of alien smuggling and smuggled
individuals who are interdicted at the land, air, and sea
borders of the United States.

(b) STRENGTHENING PROSECUTION AND PUNISH-
MENT OF ALIEN SMUGGLERS.—Section 274(a) of the Im-
migration and Nationality Act (8 U.S.C. 1324(a)) is
amended—
(1) by amending the subsection heading to read as follows: “BRINGING IN, HARBORING, AND SMUGGLING OF UNLAWFUL AND TERRORIST ALIENS.—”;

(2) by amending paragraphs (1) through (2) to read as follows:

“(1)(A) Whoever, knowing or in reckless disregard of the fact that an individual is an alien who lacks lawful authority to come to, enter, or reside in the United States, knowingly—

“(i) brings that individual to the United States in any manner whatsoever regardless of any future official action which may be taken with respect to such individual;

“(ii) recruits, encourages, or induces that individual to come to, enter, or reside in the United States;

“(iii) transports or moves that individual in the United States, in furtherance of their unlawful presence; or

“(iv) harbors, conceals, or shields from detection the individual in any place in the United States, including any building or any means of transportation;

or attempts or conspires to do so, shall be punished as provided in subparagraph (C).
“(B) Whoever, knowing that an individual is an alien, brings that individual to the United States in any manner whatsoever at a place, other than a designated port of entry or place designated by the Secretary of Homeland Security, regardless of whether such individual has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such individual, or attempts or conspires to do so, shall be punished as provided in subparagraph (C).

“(C) Whoever commits an offense under this paragraph shall, for each individual in respect to whom such a violation occurs—

“(i) if the offense results in the death of any person, be fined under title 18, United States Code, and subject to the penalty of death or imprisonment for any term of years or for life;

“(ii) if the offense involves kidnapping, an attempt to kidnap, the conduct required for aggravated sexual abuse (as defined in section 2241 of title 18, United States Code, without regard to where it takes place), or an attempt to commit such abuse, or an attempt to kill, be fined under title 18, United States Code, or imprisoned for any term of years or life, or both;
“(iii) if the offense involves an individual who
the defendant knew was engaged in or intended to
engage in terrorist activity (as defined in section
212(a)(3)(B)), be fined under title 18, United States
Code, or imprisoned not more than 30 years, or
both;

“(iv) if the offense results in serious bodily in-
jury (as defined in section 1365 of title 18, United
States Code) or places in jeopardy the life of any
person, be fined under title 18, United States Code,
or imprisoned not more than 20 years, or both;

“(v) if the offense is a violation of paragraph
(1)(A)(i) and was committed for the purpose of prof-
it, commercial advantage, or private financial gain,
or if the offense was committed with the intent or
reason to believe that the individual unlawfully
brought into the United States will commit an of-
fense against the United States or any State that is
punishable by imprisonment for more than 1 year,
be fined under title 18, United States Code, and im-
prisoned, in the case of a first or second violation,
not less than 3 nor more than 10 years, and for any
other violation, not less than 5 nor more than 15
years;
“(vi) if the offense is a violation of paragraphs (1)(A)(ii), (iii), or (iv), or paragraph (1)(B), and was committed for the purpose of profit, commercial advantage, or private financial gain, be fined under title 18, United States Code, or imprisoned not more than 10 years, or both;

“(vii) if the offense involves the transit of the defendant’s spouse, child, sibling, parent, grandparent, or niece or nephew, and the offense is not described in any of clauses (i) through (vi), be fined under title 18, United States Code, or imprisoned not more than 1 year, or both; and

“(viii) in any other case, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

“(2)(A) There is extraterritorial jurisdiction over the offenses described in paragraph (1).

“(B) In a prosecution for a violation of, or an attempt or conspiracy to violate, subsection (a)(1)(A)(i), (a)(1)(A)(ii), or (a)(1)(B), that occurs on the high seas, no defense based on necessity can be raised unless the defendant—

“(i) as soon as practicable, reported to the Coast Guard the circumstances of the necessity, and if a rescue is claimed, the name, description, registry
number, and location of the vessel engaging in the
rescue; and

“(ii) did not bring, attempt to bring, or in any
manner intentionally facilitate the entry of any alien
into the land territory of the United States without
lawful authority, unless exigent circumstances ex-
isted that placed the life of that alien in danger, in
which case the reporting requirement set forth in
clause (i) is satisfied by notifying the Coast Guard
as soon as practicable after delivering the alien to
emergency medical or law enforcement personnel
ashore.

“(C) It is not a violation of, or an attempt or con-
spiracy to violate, clause (iii) or (iv) of paragraph (1)(A),
or paragraph (1)(A)(ii) (except if a person recruits, en-
courages, or induces an alien to come to or enter the
United States), for a religious denomination having a bona
fide nonprofit, religious organization in the United States,
or the agents or officer of such denomination or organiza-
tion, to encourage, invite, call, allow, or enable an alien
who is present in the United States to perform the voca-
tion of a minister or missionary for the denomination or
organization in the United States as a volunteer who is
not compensated as an employee, notwithstanding the pro-
vision of room, board, travel, medical assistance, and other
basic living expenses, provided the minister or missionary
has been a member of the denomination for at least one
year.

“(D) For purposes of this paragraph and paragraph
(1)—

“(i) the term ‘United States’ means the several
States, the District of Columbia, the Commonwealth
of Puerto Rico, Guam, American Samoa, the United
States Virgin Islands, the Commonwealth of the
Northern Mariana Islands, and any other territory
or possession of the United States; and

“(ii) the term ‘lawful authority’ means permis-
sion, authorization, or waiver that is expressly pro-
vided for in the immigration laws of the United
States or the regulations prescribed under those
laws and does not include any such authority se-
cured by fraud or otherwise obtained in violation of
law or authority that has been sought but not ap-
proved.”.

(e) MARITIME LAW ENFORCEMENT.—

(1) PENALTIES.—Subsection (b) of section
2237 of title 18, United States Code, is amended to
read as follows:

“(b) Whoever intentionally violates this section
shall—
“(1) if the offense results in death or involves kidnapping, an attempt to kidnap, the conduct required for aggravated sexual abuse (as defined in section 2241 without regard to where it takes place), or an attempt to commit such abuse, or an attempt to kill, be fined under such title or imprisoned for any term of years or life, or both;

“(2) if the offense results in serious bodily injury (as defined in section 1365 of this title) or transportation under inhumane conditions, be fined under this title, imprisoned not more than 15 years, or both;

“(3) if the offense is committed in the course of a violation of section 274 of the Immigration and Nationality Act (alien smuggling); chapter 77 (peonage, slavery, and trafficking in persons), section 111 (shipping), 111A (interference with vessels), 113 (stolen property), or 117 (transportation for illegal sexual activity) of this title; chapter 705 (maritime drug law enforcement) of title 46, or title II of the Act of June 15, 1917 (chapter 30; 40 Stat. 220), be fined under this title or imprisoned for not more than 10 years, or both; and

“(4) in any other case, be fined under this title or imprisoned for not more than 5 years, or both.”.
(2) LIMITATION ON NECESSITY DEFENSE.—

Section 2237(c) of title 18, United States Code, is amended—

(A) by inserting “(1)” after “(c)”;

(B) by adding at the end the following:

“(2) In a prosecution for a violation of this section, no defense based on necessity can be raised unless the defendant—

“(A) as soon as practicable upon reaching shore, delivered the person with respect to which the necessity arose to emergency medical or law enforcement personnel;

“(B) as soon as practicable, reported to the Coast Guard the circumstances of the necessity resulting giving rise to the defense; and

“(C) did not bring, attempt to bring, or in any manner intentionally facilitate the entry of any alien, as that term is defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), into the land territory of the United States without lawful authority, unless exigent circumstances existed that placed the life of that alien in danger, in which case the reporting requirement of subparagraph (B) is satisfied by notifying the Coast Guard as soon as practicable after delivering
that person to emergency medical or law enforce-
ment personnel ashore.”.

(3) DEFINITION.—Section 2237(e) of title 18, United States Code, is amended—

(A) by striking “and” at the end of para-
graph (3);

(B) by striking the period at the end of paragraph (4) and inserting “; and”; and

(C) by adding at the end the following:

“(5) the term ‘transportation under inhumane conditions’ means the transportation of persons in an engine compartment, storage compartment, or other confined space, transportation at an excessive speed, transportation of a number of persons in ex-
cess of the rated capacity of the means of transpor-
tation, or intentionally grounding a vessel in which persons are being transported.”.

(d) AMENDMENT TO THE SENTENCING GUIDELINES.—

(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of
alien smuggling offenses and criminal failure to
heave to or obstruction of boarding.

(2) CONSIDERATIONS.—In carrying out this
section, the Sentencing Commission, shall—

(A) consider providing sentencing enhance-
ments or stiffening existing enhancements for
those convicted of offenses described in sub-
section (a) that—

(i) involve a pattern of continued and
flagrant violations;

(ii) are part of an ongoing commercial
organization or enterprise;

(iii) involve aliens who were trans-
ported in groups of ten or more;

(iv) involve the transportation or
abandonment of aliens in a manner that
endangered their lives; or

(v) involve the facilitation of terrorist
activity; and

(B) consider cross-references to the guide-
lines for Criminal Sexual Abuse and Attempted
Murder.

(3) EXPEDITED PROCEDURES.—The Commis-

sion may promulgate the guidelines or amendments
under this section in accordance with the procedures
set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

SEC. 204. ELIGIBILITY FOR STATE CRIMINAL ALIEN ASSISTANCE PROGRAM FUNDING.

(a) IN GENERAL.—The Attorney General shall—

(1) determine annually which State or local jurisdictions are not in compliance with section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act (Public Law 104–208) and shall report such determinations to Congress on March 1 of each year; and

(2) issue a report concerning the compliance of any particular State or local jurisdiction at the request of any Member of Congress.

(b) INCARCERATION.—Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by adding at the end the following:

“(7) A State (or a political subdivision of a State) shall not be eligible to enter into a contractual arrangement under paragraph (1) if the State (or political subdivision) has been determined by the Attorney General to be out of compliance with section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act (Public Law 104–208).
Such State (or political subdivision) shall remain ineligible until the Attorney General determines that the State (or political subdivision) has come into compliance.”.

SEC. 205. ICE IMMIGRATION ENFORCEMENT AGENTS.

(a) IN GENERAL.—The Secretary shall authorize all immigration enforcement agents and deportation officers of Immigration and Customs Enforcement who have successfully completed basic immigration law enforcement training to exercise the powers conferred by—

(1) section 287(a)(5)(A) of the Immigration and Nationality Act to arrest for any offense against the United States;

(2) section 287(a)(5)(B) of the Immigration and Nationality Act to arrest for any felony;

(3) section 274(a) of the Immigration and Nationality Act to arrest for bringing in, transporting, or harboring certain aliens, or inducing them to enter;

(4) section 287(a) of the Immigration and Nationality Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States; and
(5) section 287(a) of the Act to carry firearms, provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force.

(b) PAY.—Immigration enforcement agents shall be paid on the same scale as Immigration and Customs Enforcement deportation officers and shall receive the same benefits.

SEC. 206. ICE DETENTION ENFORCEMENT OFFICERS.

(a) AUTHORIZATION.—The Secretary is authorized to hire 2,500 Immigration and Customs Enforcement detention enforcement officers.

(b) DUTIES.—Detention enforcement officers who have successfully completed detention enforcement officers’ basic training shall be responsible for—

(1) taking and maintaining custody of any person who has been arrested by an immigration officer;

(2) transporting and guarding immigration detainees;

(3) securing ICE detention facilities; and

(4) assisting in the processing of detainees.
SEC. 207. ADDITIONAL ICE DEPORTATION OFFICERS AND SUPPORT STAFF.

(a) IN GENERAL.—The Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty Immigration and Customs Enforcement deportation officers by 5,000 above the number of full-time positions for which funds were appropriated for fiscal year 2013.

(b) SUPPORT STAFF.—The Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time support staff for Immigration and Customs Enforcement deportation officers by 700 above the number of full-time positions for which funds were appropriated for fiscal year 2013.

SEC. 208. ASSISTING GANG AND DRUG TASK FORCES.

The Secretary shall assign at least one Immigration and Customs Enforcement deportation officer or immigration enforcement agent to serve as a member of any State or local gang or drug task force—

(1) if the task force requests such assistance in writing to an ICE field office; and

(2) for as long as the task force remains active and wants such assistance.

SEC. 209. PROTECTING COMMUNITIES.

(a) PRISONS AND JAILS.—The Secretary shall assign an Immigration and Customs Enforcement deportation of-
ficer or immigration enforcement agent to every Federal, State, and County prison or jail facility.

(b) Detainers.—Immigration and Customs Enforcement deportation officers and immigration enforcement agents assigned to a prison or jail facility are required to place a detainer on every alien they determine is unlawfully present in the United States.

SEC. 210. PROTECTING PUBLIC SAFETY AND REMOVING CRIMINAL ALIENS.

(a) Notices to Appear.—Notwithstanding any other provision of law, immigration officers who encounter, under any circumstances, an alien listed in subsection (b) of this section are required to process such aliens and refer them for removal proceedings by issuing a Notice to Appear.

(b) Aliens Covered.—Aliens covered by subsection (a) of this section include any alien who is unlawfully present in the United States, whether such alien entered without inspection or violated the terms of admission, and who:

(1) Has been convicted of any felony;

(2) Has been convicted of any two or more misdemeanors;

(3) Has been convicted of a crime involving moral turpitude;
(4) Has been convicted of any felony or misdemeanor involving the operation of a vehicle while under the influence of alcohol or drugs;

(5) Has been convicted of any felony or misdemeanor involving domestic violence, sexual assault, or sexual abuse of a child;

(6) Has a known or suspected gang affiliation;

(7) Assaults any law enforcement officer; or

(8) Poses a risk to public safety or national security.

SEC. 211. PILOT PROGRAM FOR ELECTRONIC FIELD PROCESSING.

(a) In General.—The Secretary shall establish a pilot program in at least five of the 10 Immigration and Customs Enforcement field offices with the largest removal caseloads to allow Immigration and Customs deportation officers and immigration enforcement agents to—

(1) electronically process and serve charging documents, including Notices to Appear, while in the field; and

(2) electronically process and place detainers while in the field.

(b) Duties.—The pilot program described in subsection (a) shall be designed to allow deportation officers
and immigration enforcement agents to use handheld or
vehicle-mounted computers to—

(1) enter any required data, including personal
information about the alien subject and the reason
for issuing the document;

(2) apply the electronic signature of the issuing
officer or agent;

(3) set the date the alien is required to appear
before an immigration judge, in the case of Notices
to Appear;

(4) print any documents the alien subject may
be required to sign, along with additional copies of
documents to be served on the alien; and

(5) interface with the ENFORCE database so
that all data is stored and retrievable.

(e) CONSTRUCTION.—The pilot program described in
subsection (a) shall be designed to replace, to the extent
possible, the current paperwork and data-entry process
used for issuing such charging documents and detainers.

(d) DEADLINE.—The Secretary shall initiate the pilot
program described in subsection (a) within 6 months of
the date of enactment of this Act.

(e) REPORT.—The Government Accountability Office
shall report to the Judiciary Committee of the Senate and
the House of Representatives no later than 18 months
after the date of enactment of this Act on the effectiveness
of the pilot program and provide recommendations for im-
proving it.

(f) ADVISORY COUNCIL.—The ICE Advisory Council
established by section 217 of this Act shall include an rec-
ommendations on how the pilot program should work in
the first quarterly report of the Council, and shall include
assessments of the program and recommendations for im-
provement in each subsequent report.

SEC. 212. RESTRICTING VISAS FOR COUNTRIES THAT
REFUSE TO REPATRIATE THEIR NATIONALS.

(a) PENALTIES RELATED TO REMOVAL.—Section
243 of the Immigration and Nationality Act (8 U.S.C.
1253) is amended by striking subsection (d).

(b) COUNTRIES TO WHICH ALIENS MAY BE RE-
MOVED.—Section 241(b) of the Immigration and Nation-
ality Act (8 U.S.C. 1231(b)) is amended by adding at the
end the following:

"(4) DISCONTINUING GRANTING CERTAIN VISAS
AND DENYING ADMISSION TO NATIONALS OF COUN-
TRY DENYING OR DELAYING ACCEPTING ALIENS.—

"(A) DISCONTINUING GRANTING VISAS.—
Except as provided under subparagraph (C), if
a country is listed in the most recent quarterly
report submitted by the Secretary of Homeland
Security to the Congress under subparagraph (E), the Secretary of State may not issue a nonimmigrant visa pursuant to section 101(a)(15) to a citizen, subject, national, or resident of such country until—

“(i) the Secretary of Homeland Security notifies the Secretary of State that the country should no longer be so listed; or

“(ii) each alien listed in the report with respect to such country has otherwise been removed from the United States.

“(B) Denying admission to nationals and foreign government officials.—Except as provided under subparagraph (C), if a country is listed in the most recent quarterly report submitted by the Secretary of Homeland Security to the Congress under subparagraph (E), the Secretary of Homeland Security, in consultation with the Secretary of State, shall deny admission to any citizen, subject, national, or resident of that country who has received a nonimmigrant visa pursuant to section 101(a)(15).

“(C) Exception.—Subparagraphs (A) and (B) do not apply if the Secretary of State
determines that the life or freedom of the visa applicant or individual seeking admission would be threatened in the country listed under subparagraph (E).

“(D) Effect of unauthorized issuance.—Any visa issued in violation of this paragraph shall be null and void.

“(E) Quarterly reports.—Not later than 90 days after the date of the enactment of this Act, and every 3 months thereafter, the Secretary of Homeland Security shall submit a report to the Congress that—

“(i) lists all the countries that deny or unreasonably delay the acceptance of at least 10 percent of the total number of aliens who—

“(I) are physically present in the United States;

“(II) are a citizen, subject, national, or resident of such country; and

“(III) have received a final order of removal; and
“(ii) includes the total number of aliens described under clause (i), organized by—

“(I) name;
“(II) country;
“(III) detention status; and
“(IV) criminal status.

“(F) COMPLIANCE WITH REPATRIATION.—

If the Secretary of Homeland Security determines that a country listed in the quarterly report under subparagraph (E) has accepted each alien listed with respect to that country under subparagraph (E)(ii), the country shall be removed from the list in the next quarterly report submitted under subparagraph (E) and shall not be subject to the sanctions described in this paragraph, unless subparagraph (E) applies to such country with respect to another alien.

“(G) DENIES OR UNREASONABLY DELAYS.—

“(i) IN GENERAL.—Except as provided under clause (ii), in this paragraph, a country ‘denies or unreasonably delays’ the acceptance of an alien who is a citizen, subject, national, or resident of the country
if the country does not accept the alien within the removal period.

“(ii) ALIEN THAT MAY NOT BE REMOVED.—For purposes of clause (i), a country does not deny or unreasonably delay the acceptance of an alien who is a citizen, subject, national, or resident of the country if such alien may not be removed pursuant to this section.”.

SEC. 213. ADDITIONAL ICE DETENTION SPACE.

(a) IN GENERAL.—The Secretary of Homeland Security shall make arrangements for the availability of 10,000 additional beds for detaining aliens taken into custody by immigration officials.

(b) IMPLEMENTATION.—Efforts shall be made to—

(1) contract private facilities whenever possible to promote efficient use and to limit the Federal Government’s maintenance of and liability for additional infrastructure;

(2) utilize State and local facilities for the provision of additional beds; and

(3) utilize BRAC facilities or active duty facilities.
(c) CONSTRUCTION.—The Department of Homeland Security shall construct facilities as necessary to meet the remainder of the 10,000 new beds to be provided.

SEC. 214. ADDITIONAL IMMIGRATION JUDGESHIPS AND LAW CLERKS.

(a) JUDGESHIPS.—The Attorney General shall create and fill twenty additional Immigration Judgeships within 6 months after the date of enactment of this Act.

(b) CLERKSHIPS.—The Attorney General shall also ensure that for every 2 Immigration Judges there shall be no fewer than one law clerk dedicated to assisting Immigration Judges.

SEC. 215. ADDITIONAL ICE PROSECUTORS.

The Secretary shall increase by sixty the number of full-time trial attorneys working for the Immigration and Customs Enforcement Office of the Principal Legal Advisor.

SEC. 216. ENSURING THE SAFETY OF ICE OFFICERS AND AGENTS.

(a) BODY ARMOR.—The Secretary shall ensure that every Immigration and Customs Enforcement deportation officer and immigration enforcement agent on duty is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Enough body armor must be purchased to cover every agent in the field.
(b) **WEAPONS.**—The Secretary shall ensure that Immigration and Customs Enforcement deportation officers and immigration enforcement agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed criminals. Such weapons shall include, at a minimum, standard-issue handguns, M–4 (or equivalent) rifles, and Tasers.

**SEC. 217. ICE ADVISORY COUNCIL.**

(a) **ESTABLISHMENT.**—An ICE Advisory Council shall be established within 3 months of enactment of this Act.

(b) **MEMBERSHIP.**—The ICE Advisor Council shall be comprised of seven members.

(1) Members are to be appointed in the following manner:

(A) One member shall be appointed by the President;

(B) One member shall be appointed by the Chairman of the Judiciary Committee of the House of Representatives;

(C) One member shall be appointed by the Chairman of the Judiciary Committee of the Senate;
(D) One member shall be appointed by the Local 511, the ICE prosecutor’s union; and

(E) Three members shall be appointed by the National Immigration and Customs Enforcement Council.

(2) Members shall serve renewable, 2-year terms.

(3) Membership shall be voluntary and non-remunerated, except that members will receive reimbursement from ICE for travel and other related expenses.

(4) Members who are employed by ICE shall be protected from retaliation by their supervisors, managers, and other DHS employees for their participation on the Council.

(e) PURPOSE.—The purpose of the Council is to advise the Congress and the Director of Immigration and Customs Enforcement on issues including the following:

(1) The current status of ICE immigration enforcement efforts, including prosecutions and removals, the effectiveness of such efforts, and how enforcement could be improved;

(2) The effectiveness of cooperative efforts between ICE and other law enforcement agencies, including additional types of enforcement activities
that ICE should be engaged in, such as State and local criminal task forces;

(3) Personnel, equipment, and other resource needs of ICE field personnel;

(4) Improvements that should be made to ICE’s organizational structure, including whether the position of immigration enforcement agent should be merged into the deportation officer position; and

(5) The effectiveness of specific enforcement policies and regulations promulgated by ICE Headquarters, and whether other enforcement priorities should be considered.

(d) REPORTS.—The Council shall provide quarterly reports to the Chairmen and Ranking Members of the Judiciary Committees of the Senate and the House of Representatives and to the Director of Immigration and Customs Enforcement. The Council members shall meet directly with the Chairmen and Ranking Members (or their designated representatives) and with the Director to discuss their reports every 6 months.
TITLE III—GAINING OPERATIONAL CONTROL OF AMERICA'S BORDERS

SEC. 301. AUTOMATED ENTRY-EXIT CONTROL SYSTEM.

(a) System.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall develop the biometric automated entry and exit control system required by Sec. 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208), which was duly enacted by Congress and signed into law.

(b) Pilot Exit Programs.—Not later than 6 months after the date of enactment of this Act, the Secretary shall establish biometric exit pilot programs at a minimum of 10 land ports of entry, including at least two each in California, Arizona, New Mexico, and Texas, and at least two on the United States-Canada border.

(c) Purpose.—Such pilot programs, at a minimum shall match all nonimmigrant visa holders who depart the United States through the pilot port with their initial entry into the United States and report whether they departed within the terms of their visas.

(d) DHS Report.—The Secretary shall report to Congress no later than one year after the date of enact-
ment of this Act, and every 6 months thereafter, on the effectiveness of the pilot programs, including—

(1) what percentage of aliens leaving the United States through the pilot ports were tracked through the pilot;

(2) what percentage of tracked aliens violated the duration of their visas; and

(3) the rate of visa compliance by non-immigrant visa type.

(e) GAO REPORT.—The General Accountability Office shall report to Congress no later than one year after the date of enactment of this Act on the effectiveness of the pilot programs and recommendations for improving their effectiveness and expanding them nationwide.

SEC. 302. MEASURING BORDER SECURITY.

(a) IN GENERAL.—The Department of Homeland Security shall assess the effectiveness of border enforcement strategies and tools by using the metric of “operational control”.

(b) OPERATIONAL CONTROL DEFINED.—In this section, the term “operational control” means the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.
(c) DHS Report.—Not later than 1 year after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to Congress a report on the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States in accordance with this section.

(d) GAO Report.—Not later than 1 year after the date of the enactment of this Act and annually thereafter, the General Accountability Office shall submit to Congress a report on the progress made toward achieving and maintaining operational control over the entire international land and maritime borders of the United States in accordance with this section.

SEC. 303. NATIONAL STRATEGY TO ACHIEVE OPERATIONAL CONTROL OF AMERICA'S BORDERS.

(a) Requirement for National Strategy.—The Secretary, in consultation with the heads of other appropriate Federal agencies, shall develop a national strategy to secure the borders that describes actions to be carried out to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States by December 31, 2015.

(b) Content.—The national strategy to secure the borders shall include the following:
(1) An assessment of the threats posed by terrorists and terrorist groups that may try to infiltrate the United States at locations along the international land and maritime borders of the United States.

(2) A risk assessment for all United States ports of entry and all portions of the international land and maritime borders of the United States that includes a description of activities being undertaken—

(A) to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) to protect critical infrastructure at or near such ports of entry or borders.

(3) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

(4) An assessment of staffing needs for all border security functions, taking into account threat
and vulnerability information pertaining to the bord-
ners and the impact of new security programs, poli-
cies, and technologies.

(5) A description of the border security roles
and missions of Federal Government, State govern-
ment, local government, and tribal authorities, and
recommendations regarding actions the Secretary
can carry out to improve coordination with such au-
thorities to enable border security and enforcement
activities to be carried out in a more efficient and
effective manner.

(6) An assessment of existing efforts and tech-
nologies used for border security and the effect of
the use of such efforts and technologies on the safe-
ty, civil rights, private property rights, privacy
rights, and civil liberties, including the effects on
Americans living in the border region and local,
State, and Federal law enforcement officers working
in the border region.

(7) A prioritized list of research and develop-
ment objectives to enhance the security of the inter-
national land and maritime borders of the United
States.

(8) An assessment of additional detention facili-
ties and beds that are needed to detain unlawful
aliens apprehended at United States ports of entry or along the international land borders of the United States.

(9) A schedule for the implementation of the security measures described in said strategy, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, an estimate of the resources needed to carry out such measures, and a description of how such resources should be allocated.

(c) CONSULTATION.—In developing the national strategy for border security, the Secretary shall consult with representatives of—

(1) State, local, and tribal governmental authorities with responsibility for locations along the international land and maritime borders of the United States; and

(2) appropriate private sector entities, non-governmental organizations, and affected communities that have expertise in areas related to border security.

(d) COORDINATION.—The national strategy for border security shall be consistent with the National Strategy for Maritime Security developed pursuant to Homeland

(c) Submission to Congress.—

(1) Strategy.—Not later than December 31, 2013, the Secretary shall submit to Congress the national strategy to achieve operational control of U.S. borders.

(2) Updates.—The Secretary shall submit to Congress any update of such strategy that the Secretary determines is necessary, not later than 30 days after such update is developed.

(f) Immediate Action.—Nothing in this section may be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain immediate operational control over the entire international land and maritime borders of the United States.

SEC. 304. IMPROVING BORDER TECHNOLOGY.

(a) Equipment Sharing Between Department of Homeland Security and Department of Defense.—The Secretaries of these 2 departments shall develop and implement a plan to use authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned
aerial vehicles, tethered aerostat radars, and other surveil-
ance equipment, to assist the Secretary in carrying out
surveillance activities conducted at or near the inter-
national land borders of the United States to prevent ille-
gal immigration.

(b) REPORT.—Not later than 6 months after the date
of enactment of this Act (and then annually from that
point), the Secretary and the Secretary of Defense shall
submit to Congress a report that contains—

(1) a description of the current use of Depart-
ment of Defense equipment to assist the Secretary
in carrying out surveillance of the international land
borders of the United States and assessment of the
potential risks to citizens of the United States and
key foreign policy interests associated with the use
of such equipment;

(2) the plan developed under subsection (a) to
increase the use of Department of Defense equip-
ment to assist such surveillance activities; and

(3) a description of the types of equipment and
other support to be provided by the Secretary of De-
fense under such plan during the 1-year period be-
ginning on the date of the submission of the report.

(c) SECURE COMMUNICATION.—The secretary shall,
as expeditiously as practicable, develop and implement a
plan to improve the use of satellite communications and
other technologies to ensure clear and secure 2-way com-
munication capabilities—

(1) among all Border Patrol agents conducting
operations between ports of entry;

(2) between Border Patrol agents and their re-
spective Border Patrol stations; and

(3) between all appropriate law enforcement
agencies of the Department and State, local, and
tribal law enforcement agencies.

(d) Other Technology Upgrades.—The Sec-
retary shall purchase and implement new technology to se-
cure the borders, including, but not limited to drones, in-
frared cameras, sensors, mobile lighting units, radar and
infrared heat.

SEC. 305. ENSURING THE SAFETY OF BORDER PATROL
AGENTS.

(a) Body Armor.—The Secretary shall ensure that
every agent on duty is issued high-quality body armor that
is appropriate for the climate and risks faced by the agent.
Enough body armor must be purchased to cover every
agent in the field.

(b) Weapons.—The Secretary shall ensure that
agents are equipped with weapons, including long-guns,
that are reliable and effective to protect themselves, their
fellow agents, and innocent third parties from the threats posed by armed criminals. The Secretary shall ensure that the policies of the Department authorize all agents to carry weapons that are suited to the potential threats that they face, and that all agents receive appropriate training in the use of such weapons.